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relative merits of the parties' positions.^{4/}

These factors are flexible, and none of them are necessarily dispositive.^{2/} The Court will address each of the factors in turn.

First, the Court considers the opposing party's culpability or bad faith. Here, Plaintiff Palagyi brought suit claiming that Defendant P&C Dock furloughed him, recalled him to service, and then terminated him in order to deny him his right to lifetime health insurance.^{3/} At the time Plaintiff Palagyi filed his Complaint, he did not have access to the old or new health insurance plans. While the Court ultimately found that Plaintiff Palagyi was never entitled to lifetime health coverage under his old or new health insurance coverage,^{3/} the Court does not find bad faith on the part of Plaintiff Palagyi.

Second, the Court reviews the opposing party's ability to satisfy an award of attorney fees and costs. Plaintiff Palagyi is a lower-middle-class laborer who has been out of work for significant amount of time.^{4/} As such, the Court finds he is not able to pay for Defendant's attorney fees and costs.

Third, the Court considers the deterrent effect. Although the Court found that the Plaintiff's claim could not survive summary judgment, awarding attorney fees in ERISA cases would tend to create a chilling effect on other plaintiffs seeking redress under ERISA.

Fourth, the Court considers whether Defendant P&C Dock sought to confer a common

⁴*Armistead v. Venitron Corp.*, 944 F.2d 1287, 1301 (6th Cir.1991) (quoting *Sec'y of the Dep't of Labor v. King*, 775 F.2d 666, 669 (6th Cir.1985)).

²*Foltice v. Guardsman Prods., Inc.*, 98 F.3d 933, 937 (6th Cir.1996).

³Doc. 1.

³Doc. 37.

⁴See Doc. 33-8 at 3.

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benefit on all participants and beneficiaries of an ERISA plan or resolve significant legal questions regarding ERISA. It is clear that Defendant P&C Dock did not seek to confer a common benefit on all participants and beneficiaries of an ERISA plan. Furthermore, this case did not resolve any legal questions involving the interpretation of ERISA.

Finally, the Court considers the relative merit of the parties' positions. The fifth factor weighs in favor of Defendant P&C Dock who was successful on the merits. This factor alone, however, does not support an award of attorney fees. After considering these factors, and in the exercise of this Court's discretion, the Court declines to award attorney fees and costs in this action.

For the foregoing reasons, the Court **DENIES** Defendant's motion for attorney fees and costs.

IT IS SO ORDERED.

Dated: March 25, 2014

s/ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE